THE VICE-CHAIRMAN; What is your point of order?

SHRI RAOOF VALIULLAH; My point of order is that you are flouting the hon. Chairman's commitment. He said that the Special Mentions must have precedence today.

SHRI M. S. GURUPADASWAMY: May I say we are not barring anything at all. *(Interruptiori)* We are not bypassing anything in the House today. We are prepared to sit till midnight. Let the official business go on. *(. Interruptions)*

RESOLUTION MSAPROVING CODE CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1990

AND

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1990.

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): Now we take up the Statutory Resolution disapproving the Code of Criminal Procedure (Amendment) Ordinance, 1990 and the Code of Criminal Procedure (Amendment) Bill, 1990. These will be discussed together.

I request Mr. Subramanian Swamy to move the Resoluion.

SHRI SUBRAMANIAN SWAMY (Uttar Pradesh): I move:

> That this House disapproves of the Code of Criminal Procedure (Amendment) Ordinance, 1990 (No. 1 of 1990), promulgated by the President *on* the 19th February, 1990.

SHRI A. G. KULKARNI (Maharashtra): Sir, I am on a point of order.

SHRI V. NARAYANASAMY: (Pondicherry): Sir, I arm on a point of order.

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): l|tr. Kulkarni is on a point of order.

SHRI V. NARAYANASAMY: I am. also on a point of order.

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): I have called Mr. Kulkarni.

SHRI V. NARAYANASAMY: All right.

SHRI A- G. KULKARNI: Sir, my point of order is this. The Leader of the House is also here. I say that this business is being rushed through without any recourse to any convention of this House. Usually this session starts in early February or by 20th of February. But this session started late. But leave that point aside. Now the next session they hava called on 30th April. It was the same Mr. Gurupadaswamy, Mr. Upendra and Mr. Advani who raised many points of order on the efforts by the Treasury benches to shorten the session.

SHRI JAGESH DESAI (Maharashtra): They have no mind. They do not know how to run the session.

SHRI A. G. KULKARNI: The right for a session is ours. We" have been elected as Members. Our right is to debate and discuss every problem that we are facing. Now, take Kashmir. It is like Nero fiddling when Rome is burning. What is happening in Kashmir? There has been no intensive discussion on it. The people will ask us what did we do? Would we say that we heard only Mr. Mufti Mohammad Sayeed?

THE VICE-CHAIRMAN (SHRI SATYA' PRAKASH MALAVIYA): What is your point of order?

SHRI A. G. KULKARNI; My point of order is I am not going to allow a discussion on this unless we finish the Special Mentions. Your next session must start on 23rd April. Otherwise this cannot go on today. We will not cooperate.

SHRI V. NARAYANASAMY: I am on a point of order. Mr. Vice- Chairman, Sir, before the Home Minister

came to this House, you announced that we will take up the special mentions and you also called the name of hon. Member, Shri Suresh Kalmadi. Then, when we were about to proceed with this matter, the Home Minister entered the House. As soon as the Home Minister entered the House you announced that the House will take up the Code of Criminal Procedure (Amendment) Bill, 1990 and once the business is taken up, we cannot switch over to another business. Therefore, my question is that we have to take up the special mentions first. That is my point of order.

श्री सुरेन्द्रजीत सिंह अहलूवालिया (बिहार): उपसभाध्यक्ष जी, आज दोपहर में पहले जब फेयरवैल की स्पीचेज हो रही थीं, उसके बाद यह निर्णय, सभापति द्वारा, लिया गया था कि सारे मुद्दे साढ़े तीन बजे तक, और उसके बाद प्राइवेट मेम्बर बिल का काम चार बजे से किया जाएगा, फिर यह चार बजे किया गया और उसके बावजूद जब होम मिनिस्टर यहां पर उपस्थित नहीं थे और प्रधान मंत्री भी यहां पर उपस्थित थे, उसके बावजूद गृह मंत्री लेट आए । अब जब कि आपने स्पेशल मेंशन ले लिया है, उसके बाद आप इसको कैसे रोक सकते हैं ? अगर आपको विचार करना है, तो आप दिन बढ़ाये । उसके बाद डिसकस करेंगे । आपके पास पंजाब समस्या को डिसकस करने के लिए समय नहीं है । (व्यवधान)

SHRI M. S. GURUPADASWAMY: May I make a submission?

SHRI MADAN BHATIA (TFT fa Sftlff) I want to raise a point of order.

SHRI JAGESH DESAI; We have to take up special mentions and no other business.

SHRI M. S. GURUPADASWAMY: Why don't you hear me?

SHRI A- G. KULKARNI: Do you think th»d this House is the property (interruptions)...

SHRI M. S. GURUPADASWAMY: Why don't you please hear me now?

PROF. CHANDRESH P. THAKUR (Bihar): MY. Vice-Chairman, Sir, did you announce Mr. Kalnsadi's name or not? If he is not there, you call the next man.

SHRI M. S. GURUPADASWAMY: I am making a submision. Why don't you hear me?

THE VICEErCHAlRMAN (SHRI SATYA PRAKASH MALAVIYA): Please listen to the Leader of the House.

SHRI M. S. GURUPADASWAMY: Sir, the Members are exercised, they want to have special mentions to be taken up no itself... *(Interruptions)...* just a minute, why are you so impatient? I only pleaded with you that the official business has "to be passed. I have no objection if we sit longer

(Interruptions)... Are you converting this House into a battlefield or what? Let me make a submission here.

(Interruptions)... ! have no objection if special mentions are taken up now. Later on we -will pass the Code of Criminal Procedure (Amendment) Bill, 1990.

डा० रत्नाकर पाण्डे (उत्तर प्रदेश) : मान्यवर, यह बिल अगले सेशन में लाइये । .... (व्यवधान)

SHRI MAKHAN LAL FOTEDAR (Uttar Pradesh); Mr. Vice-Chairman, Sir, may I seek the indulgence of the House for a minute? As I understand, the hon. Chairman decided that the Resolution which is being moved by Mr. Syed Sibtey Razi will continue up to 4. 150 P. M. and after 4. 00 P. M. the official business, the Code of Criminal Procedure (Amendment) Bill and some other business will be taken up for consideration before the House. I think the orders of the Chairman should be carried out by the Government. Let us discuss the Bill which Is very important. We

L&hn Makhan Lai Fotedar

would like to help the Government in that. After that whatever business is left, we will discuss.

SHRI SYED SIBTEY RAZI (Uttar Pradesh): Sir, I am on a point of order.

THE VICErCHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): What is your point of order?

SHRI SYED SIBTEY RAZI: Sir, the Private Member's Resolution is very important because every Member of this House is interested to speak on this subject. If you are not going to etxtend lit for the next Session, I move a resolution that this Resolution should (be extended to the nextt session because you are jeopardising my right to reply and...

आप इस बात का प्रयास कर रहे ह ...(व्यवधान)..

उपसभाध्यक्ष (श्री सत्य प्रकाश मालवीय) : आप अध्यक्ष पर आरोप नहीं लगाएं ।

श्री सैयद सिब्ते रजी : मैं सरकार पर आरोप लगा रहा हूं । सरकार ने जानबूझ-कर मेरे इस रिजोल्यूशन पर बहस होने से रोकने के लिए षडयंत्र किया है । मैं आरोपित करता हूं सरकार को । यदि मेरा यह रिजोल्यूशन नहीं लिया जाएगा तो इसका मतलब यह है कि जो मुद्दे सरकार के खिलाफ हैं चुनाव के संबंध में, चाहे वह मेहम हो या कोई और क्षेत्र हो, जो मुद्दे उठाए गए हैं उन पर सरकार जवाब देना नहीं चाहती है । सरकार ने पिछले एसेम्बली के चुनाव में बंगलिंग की है । किसी-न-किसी तरीके से बूथ कैप्चरिंग कर के...(व्यवधान)... इसलिए मैं साथ चाहता हूं कि यह रिजोल्यूशन जो मेरा हक है, अधिकार है, इसके संबंध में यह रिजोल्यूशन मूव करता हूं । नेक्स्ट सेशन के लिए यह एक्सटेंड किया जाना चाहिए । इस रिजोल्यूशन को गंभीरता से लेने का सरकार का दायित्व बनता है । लेकिन सरकार उस दायित्व से भाग रही है । मेरा सरकार पर यह खुला आरोप है । आपको मेरे इस अधिकार को हनन से बचाने के लिए मुझे सुरक्षा देनी पड़ेगी । आपको आगे आना पड़ेगा क्योंकि इस चेयर पर आप आसीन हैं । आप जानते हैं कि यह इलेक्सन रिफार्म से संबंधित कितना महत्वपूर्ण रिजोल्यूशन है । लेकिन जिस तरह से इसको कर्टेल किया गया है, एवोइड किया गया है, सप्रेस किया गया है, उससे मंशा साफ जाहिर होती है कि सरकार की इस पर नीयत बुरी है । इसलिए मैं चाहता हूं कि आप मेरे इस रिजोल्यूशन को एक्सटेंड करें और इस पर बहस नेक्स्ट सेशन में जारी रखें ।

SHRI A. G. KULKARNI: Sir, I have already drawn your attention to the efforts being made by the Treasury Benches to shorten the period of the Session which accusation was made by my friends now sifting on the Treasury Benches on the Congress party. I want to know your ruling whether any direction can be given to the hon. Leader of the House because shortening of Session is really damaging the fabric of democracy. They should not do it. What is your ruling on this? You were also there. I want to know from you.

THE LEADER OF THE HOUSE (SHRI M. SL GURUPADASWAMY)[1]: Let me assure my friend. I share his concern. I support his view and keeping thafin view, I suggested yesterday that the. next Session should be longer and I am not going to shorten it at all. It will be longer, of course. *(Interruption).* I have noted your concern. I am sharing your concern. I supoort you.

श्री सैयद सिब्ते रजी : मेरे रिजोल्यूशन के बारे में क्या रूलिंग है ?

उपसभाध्यक्ष (श्री सत्य प्रकाश मालवीय) : देखिए जो नियम हैं, उन नियमों के अंतर्गत आपका जो गैर सरकारी संकल्प है, यह लैप्स हो गया, लोप हो गया । इसलिए अब मैं श्री सुब्रह्मण्यम स्वामी को बुलाता हूं । (व्यवधान)

श्री सैयद सिब्ते रजी : आप इसे किस तरह कर्टेल कर रहे हैं, किस नियम के अंतर्गत आप सरकार को जवाब देने से रोक रहे हैं ?

उपसभाध्यक्ष (श्री सत्य प्रकाश मालवीय) : आप क्यों बार-बार दबाव डाल रहे हैं ?

श्री सैयद सिब्ते रजी : मेरे इस रिजोल्यूशन पर सरकार की ओर से जवाब आना चाहिए और मुझे इस अधिकार से वंचित करने का कोई नियम नहीं है ।

उपसभाध्यक्ष (श्री सत्य प्रकाश मालवीय) : आप बार-बार उसी मामले को उठा रहे हैं । मैंने उस पर अपनी व्यवस्था दे दी है । अब मैं श्री सुब्रम्हण्यम स्वामी को "कोड आफ क्रिमिनल प्रासीजर एमेंडमेंट बिल" बोलने के लिए बुला रहा हूं ।

SHRI SUBRAMANIAN SWAMY (Uttar Pradesh): Mr. Vice-Chairman, Sir. I have already moved the Statutory Resolution and I would like to say a few words fn its support. This Bill that has come before the House is to replace an Ordinance that was passed on 19th of February and this Bill when enacted into law, aims to help the Government to seek help abroad at the investigation stage itself. In other words, in any crime, the crime process underlined in the Criminal Procedure Code—therel are three stages—the investigation, the enquiry and finally the trial. So far as the question of obtaining help from abroad is concerned, section 189 and 285 of the Code of Criminal Procedure Is sufficient for the purpose of , obtaining help from abroad. But there has been, so far no provision by which, during the investigation stage also, help can be obtained from ibroad for the purpose of carrying out the investigation itself. Sir, there is nothing wrong in the goal itself. But the manner in which this whole thing has been constructed and put together will introduce chaos into our crime-investigative process. That is the reason why I have given the disapproval motion. Not only it will introduce chaos but it will undermine the institution of criminal ^courts itselfv For example clause 166A which I may read says:

> "If, In the course of an investigation into an offence, the investigating officer or an officer superior in rank to the investigating officer, has reason to believe that evidence may be available in a country or place outside India, he may issue a letter of request—
>
> (i) to the authority competent to investigate such offence in that country or place" where crime has taken place: or

to the authority competent to direct such an investigation in the country and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the officer issuing such a letter. In other words, what this clause l^A CI) proposes to Ido is to equate an investigating officer with the court. It is giving him the status of a court. Who is the investigating officer in a crime? The SHO or the sub-inspector and this clause empowers the sub-inspector and the SHO to do what properly the courts should do. If this power was in the hands of the criminal court and if the Bill said that on presentation of an affidavit or a petition or on launching an application, the courts could issue such a letter, then there would have been no problem, there would have been sufficient safeguards. That is there also. In addition, they have provided a provision by which the criminal courts can be bypassed. That is something which I strongly object to and I think it will introduce chaos into the system. Sir, not only that. Under the INTERPOL arrangement, every country has to nominate a national crime bureau. In this particular case, we have in the past nominated the CBI. And it is the CBI alone which, in international matters, is supposed to carry out the investigation where these things are involved. But what we are finding is,

(Shri Subramaniam Swamy)

if this Bill becomes an Act, not only the CBI but any investigating agency, any police officer, can go abroad and seek information. This •would create enormous chaos besides undermining the institution of courts. Worse, Sir, is the motivation behind this amendment. The motivation appears to be that after the Government failed to convince a Judge called R- C. Jain about the *prima facie* nature of the Bofors investigation and make him Issue a certificate, what they felt-(Interruption). Mr. Vice-Chairman, 1 am not taking a few more minutes. You need not be prompted on cutting. *(. Interruption)'.*

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): Two minutes.

SHRI SUBRAMANIAN SWAMY: I have hardly begun. I have taken only two minutes. Only four minutes totally for a statutory resolution! How can it be?

THE VICE-CHAIRMAN: The total time allowed is only two hours.

SHRI SUBRAMANIAN SWAMY: That is all right. But this is the most important part of it, the statutory resolution disapproving it.

So, what we found was that the refusal of Mr. R. C. Jain *to* issue a certificate that there exists a prima *facie* case on the Bofors matter led to the transfer of the Judge himself. Not only that. They thought of this wise idea *ot* bypassing the court itself. That means that if this Bill becomes an Act, it will enable fishing expeditions by any set of investigating officers in the country, and I am rot sure whether it is going to work also because if you look at the reciprocity clause 2 of the Bill or section 1S6B of the Act, there is no reciprocity. In the case of an Indian, any investigating officer can write abroad, but in the car* of a foreigner, he will have to approach the Central Government and the Central Government will decide whether to allow them to proceed here or not. Now, no country is going to accept this and I have studied the reply of the Minister in Lok Sabha and there is no explanation to this fact that there is no reciprocity. So this will become a dead letter. What I would like to siy in conclusion this. Ah impression was created during the Assembly elections that this ordinance was meant for the B'tors and HDW investigation and it was supposed to have led to the freezing of the accounts. Well, actually the ordinance did not lead to any freezing of the accounts. The accounts were frozen on the filing of the F. I. R. In fact, the freezing was done on the old law on 26th of January whereas the ordinance was issued on the Sth of February. And in fact, it is not even correct any more that the accounts are now totally frozen. I have heard from Switzerland that now the Swiss courts have allowed the holders of those accounts to withdraw amoints provided the amount withdrawn is not in excess of the amount deposited by the Bofors. S_0 it is already partially defrozen.

The question 1 would like to ask from the Minister is this. After issuing this ordinance, how many letters rogatory or whatever it is called, have you issued? How many letters of request have you issued and on which issue, whether it is Bofors or anything else? In my opinion, if the Government was sincere about Bofors, they don't need these laws. This law is really meant for a fishing expedi-tion tion. It is not meant for Bofors and indeed if they appoint me as a Prosecutor, I can find out who the Bofors beneficiaries are, within fifteen days as the Government itself promised, but which it did not do. I k:: ow why the Government is not doing it. Because they have found out that one of the names happened to be of one within their own ranks and they are nonplussed today. Sir, according to my information, they can get the names of the beneficiaries directly

from the Bofors. The Board of Directors' minutes of Bofors have the names of the ultimate beneficiaries. The Government has made no effort to get it from them. The Government can get it from Switzerland Bank if they make a sincere effort. But they have not *f* done it and indeed, I feel that this whole thing is an attempt only to further the Government's ability to go on a fishing expadition On a variety of things whicn have got nothing to do centrally with the Bofort: matter.

Sir, I will conclude by asking the Minister whether he is very serious about using this ordinance which is fn the form of a Bill and which will become an Act. *(Interr'tiiUons)...*

SHRl MAKHAN LAL FOTEDAR: Do you think they are serious about themuelv>!s?

SHRI SUBRAMANIAN SWAMY: Yes, you are right. There was a news item in the "Indain Express" and "Indian Express" is functioning as an olficial gazette of the National Front Government, that is why I am quoting the ' Indian Express ' which says: Mr. Chandraswamy has said Mr. Ham Jethmalani and the Additional Solicitor-General, Mr. Kapil Sibal are guilty of foreign exchange violation and they have taken money— I have proof—which they have deposited abroad. I would like to know,

• since Mr. Ram Jethmalani is a Member of this House and Mr. Sibal is an appointee of this Government, have

i you written under this ordinance any letter so far to find out whether they have violated this? And indeed if the Government, is able to honestly tell us which are the letters w-itten, then we would *get* an idea as to which are the investigations done. And that is why I oppose this ordinance and I have given notice of a motion disapproving this ordinance. Thank you. Sir.

THE MINISTER OF HOME AFFAIRS (SHRI MUFTI MOHAMMAD SAYEED): Sir, i beg to move:

That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by the Lok Sabha, be taken into consideration.

Sir, the Code of Criminal Procedure, 1973, did not contain any provision empowering the criminal courts or the investigating agencies in India to issue letters of request to their counterparts in foreign countries to collect evidence during, the course of investigation of offences committed by an Indian citizen either in a foreign country or in lndia even where the links of criminal conspiracy lie in the foreign counfries. The investigating agencies in India were, therefore, finding themselves handicapped in obtaining such evidence. To enable the investigating agencies in India to obtain evidence from foreign countries in connection with an offence under investigation in India, it was found necessary to amend the Code.

Whereas Parliament was not in session and it was considered wcessaiy to effect the necessary amendments in the Code without delay since certain investigations were in progress in India which required collection cf evidence in foreign countries, the President promulgated the Criminal Procedure Code (Amendment) Ordinance, 1990 on 19-2-1990. It was necessary to replace the Ordinance by a regular legislation and, therefore this Bill, as passed by the Lok Sabha, has been brought before this House.

The Bill empowers the investigating agencies and the courts in the country to issue letters of request to their foreign counterparts to examine orally any person acquainted with the facts and circumstances of the case and also to require such person or any ether person to produce any document or material which may be fa his possession pertaining to the case. It slso provides that every statement recorded or document produced, collected by the investigating authority or the courts in a foreign country will be forwarded to the investigating agen-

[Shri Mufti Mohammad Sayeed]

cies or courts in India issuing the letters of request and sucn evidence shall be deemed to be evidence collected during the course of investigation.

Having regard to the principle of reciprocity, the Bill also provides that upon reciept of a similar request from the foreign investigating agencies or courts through the Central Government, (the investigating agencies or courts in India will collect similar evidence and documents and send them to their foreign counterparts.

The proposed legislation will en-aible /the investigating agencies to obtain evidence and other documents from persons residing in foreign Co. untri. es diuiing investigation. This will undoubtedly help in efficient and effective investigation of offences committed by Indian citizens.

Sir, I commend the Bill for the consideration of this august House.

(The Deputy Chairman in the Chair)

THE DEPUTY CHAIRMAN: Mr. Kulkarni, you kindly move your amendment. You have to give the names of Members who will be on this Select Committee.

SHRI A. G. KULKARNI (MAHARASHTRA): Madam, I beg to move:

That the Bill further to amend the Code of Criminal Procedure, 1973, be referred to a Select Cornmittee of the Rajya Sabha, consisting of the following members, namely: _____

(1) Shrimati Jayanthi Natarajan,

(2) Shri S. S. Ahluwalia,

(3) Dr. Ratnakar Pandey, C4)

Shri Jagesh Desai, and

(80 Shri A. G. Kulkarni.

with instructions to report by the end of the current Session of the Rajya Sabha.

The questions wen (proposed.

THE DEPUTY CHAIRMAN: The Statutory. Resolution, the Bill and the amienament are there before the iiouse for discussion. Now, Mrs. Jayanthi Natarajan.

SHRiMAXi JAYANTHI NATARA-* JAM (Tamil Nadu): Madam Deputy Cnairrnan, I rise to oppose certain parts of the Bill. Beiore I begin I want to place on record my strong protest at the way in which this Bill is being rushed through this House. The limits of parliamentary decorum do not permit me to use a stronger language but all I can say is that the way in which they are rushing this Bill through the House is just a continuation of the way in which this Bill has been drafted. The most charitable explanation that I can give to this Government, the most charitable explanation, is none of the members of the Cabinet ever bothered to even read through this Bill because I am sure if they had read the Bill they would not have allowed it to come before Parliament in the manner in which it has been drafted. I can also only assume, most charitably, that the person who drafted it —I don't want to take the name because, obviously,. it was some officer.. just did not know what he was doing, because this Bill is not only a monument of bad drafting, haphazard, totally ill-conceived, but also contrary to the most elementary principles* of constitutional law and jurisprudence.

Before I go further and talk about this Bill, I first want to get one aspect out of the Bill. Obviously this Bill, the Ordinance which this Bill Is intended to replace, was brought forward with a view to conducting further investigations into the Bofors controversy. Let me say without any delay on behalf of my party, the Congress, we are with you in your

pursuit of the truth. We are with you in your pursuit of the truth and we wish you well. We want you to go fast. Ever" since this Government came into power and even before, during the elections, they were proclaiming from the rooftops that the moment they came into power, the next day the very next day, they would find that culprits in this affair. So we waited to see. Then they said they would do it within ten days, then within six weeks. Now. today, more than a hundred glorious days have gone,. ~

SOME HON. MEMBERS: Inglorious.

SHRIMATI JAYANTHI NATARAJAN (Tamil Nadu): All right, inglorious. One hundred and fifteen inglorious days have gone oy and we in this House, the country, the people to whom you promised, are ail waiting as to when the results of Bofors are to come. If this Bill was to bring out the truth in Bofors we would be the first to support it. In fact, we are supporting most of the provisions of the Bill; The problem. is you are not bringing this Bill- yo, i are misleading the people of this country; you are not genuine in your quest. Madam, I am talking of the Government. When I say 'you', I mean t'he Government'...

THE DEPUTY CHAIRMAN: Then you say 'they'.

SHRIMATI JAYANTHI NATARAJAN: I say in 'their' quest. They are not genuine in their quest, in their quest for truth. I say this with great authority and conviction because this Bill is just to obfuscate the truth. They are trying to fool the people of this country saying that they have brought this Bill, they have brought that Bill. But they have done precious little. Let me prove my point. Since the time is short I have to be brief. But I want the House to cast their mind back. First of all, 'what has been done by this Government ever since they came to power? Six accounts have been frozen in Boiors and one letter rogatory issued. But it was the previous Government under Mr. Rajiv Gandhi that entered into the Memorandum of Understanding with the Government of Switzerland and it was under thai Memorandum of Understanding that these accounts were frozen and that the letter rogatory was issued. Tnis Government had nothing to do with it. Then what happened was the President of indja summoned Parliament on 9th February to meet on the 12th March —on 9th Feoruary to meet on 12th March. This Ordinance was brought forward on the 19th February. What did they do? After this gross impropriety of issuing an Ordinance after Parliament was summoned to meet by the President what were they going to achieve that was so important between the 19th February and 12th March? The country was waiting with batted breath to see what they were going to achieve- What did they achieve? Precious little. In fact, nothing. They did not do anything. The only thing that took place between the 19th February when the Ordinance was promulgated and the 12th March when Parliament was to meet was the Assembly elections on the 27th February. And what this Government wanted tii do was to fool the people of India, to give headlines in all the newspapers that they were on a trail blazing pursuit of truth. They actually did nothing in pursuance of the Ordinance and now we have this Bill before us. Madam, there is no reason. It is not as if the powers did not exist already. It is not as if. the powers did not exist in the criminal law because we all know that the CBI in this country is the national crime bureau of this country. It has an informal arrangement with the Interpol. There are national crime bureaus of other countries and there informal arrangements exist already by which information can be gathered.

Madam, - then there are two or three things. Madam, the letter of request was issued some time in February

[Shrimati Jayanthi Natarajan]

1989 by the previous Government, for which an answer came around the 19 August 1989, also during the time of the previous Government., The second letter of request was issued again by the previous Government in October 1989, and only one letter of requ-rst has V'een issued by this Government. This was some time during this year. Therefore, everything that has been done in pursuance of the Bofors actually has been done by the previous Government. And of course it was the previous Government which first approved of this principle.

Madam, I am sure you are aware that the criminal law is actually a process of investigation. There is a process of inquiry. There is a process of trial. All this is divided into three parts. Madam, that is what happens. It was found by the previous Government that as far as the process of trial and inquiry were concerned, there were already provision existing under the law to provide for gathering evidence in foreign countries, whenever necessary. It was found that there was a small problem as far as investigation was concerned. As far as the investigation was concerned, it was the previous Government that first approved the principle in draft. Now$_t$ Madam, the idea was to enable a criminal court of this country to make a request to the criminal court of some other country to gather a piece of evidence or to enable a piece of evidence to be gathered In order to help in the investigation of some offence. This was the original intention. But what actually happened Is that this is a Bill which has been brought in a haphazard fashion.

Madam, if you read the Statement of objects and Reasons of the Bill, it says.

"The investigating authorities in India were handicapped in collec- j ting evidence, available in a foreign country or place, in respect of » crime committed by a citizen of lndia outside the country, due to the absence of a specific provision in the Code of Crunte&l Procedure, 1973. Hence an Ordinance was promulgated on the 19th February, 1990, to amend the Code for the purpose.

"A *new* section 166A had been inserted in the Code to enable the investigating authorities and [tae] Criminal Courts to issue letter of request to their counterparts in foreign countries to collect evidence and transmit the same to the authority or Court issuing such letter. Every evidence so collected shall be deemed fo be evidence collected during the course of investigation.

"Having regard to the principle of reciprocity, another section, namely, section 166B, had also been inserted in the Code for facilitating letters of request to be sent by foreign investigating agencies or Courts to their counterparts in India for similar purposes... "

This is the Statement of Objects and Reasons. Now, the hon. Home Minister made a statement that the Bill enables the Courts to issue letters of request to foreign counterparts.

(The Vice-Chairman (Shri Jagesh Desai) in the Chair)

Sir$_t$ I wish to join issue with the Home Minister on this point which is totally incorrect. There are various aspects of my opposition to this particular section 166A(1). What they have done, Sir, is that they have tried to equate the Criminal Code of the country with the investigating officers. Sir, an investigating officer is usually a Sub-Inspector or any officer in charge of a police station. What is this Government trying to dp? During the entire session we ihave been hearing loud debates on the other side speaking about the 64$h amendment which they brought in,

saying that the previous Government took away all the problems and that this Government is a democratic Government and they want to shed all the powers and want to give democratic rights back to the people. They said that they are totally against any kind of power being taken away from the people. This is the Government which is now trying to take away completely the powers of the courts in which is enshrined the duty to protect the rights of the citizens. Now they are giving the powers into the hands of he Police Officers. Without j going into it legally, I want to give a ! simple example. We have absolutely no objection at all.. in fact, we are supporting that provision 166A(1) by which power is sought to be given to a criminal court in this country to make a request to a foreign court to gather evidence during the couise of the investigiUon. We Ere supporting that part of the Bill.. The objection we have is to that part of the Bill where the power is sought to be given to a Police Officer, a Sub-Inspector of Police. I want to remind this Hou33 that by this what power has bee a given is that a Sub-Inspector of police anywhere in the country, in any remote corner of the country, can write a letter to any other foreign country, to anybody, to any Police Officer in any other country in the world and ask him to collect evidence against somebody. It is not right. *(Interruptions)* I think it will help us if I read thi J provision. This is Clause 166A(H) which says:

"If, in the course of an investigating officer or an officer superior gating officer or an officer superior in rank to ?'-e investigating officer, has reason to believe. (This means the Sub-Inspector or any Officer in charge • f a Police Station.) that evidence may be available in a country or place outside India, he may issue. 1 letter of request to the authority competent to investigate such offence in that country or place to examine orally any person sup-

posed to 3e acquainted with the facts and circumstances of the case and to record his statement made in the course of such examir alien and , also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case.

What are we doing by this clause? This is a clause by when an officer of the level of a Sub-Insector can write to any foreign country, ask anybody in that foreign country to immediately...

RE. CONSTITUTION(STXTYFOTJRTH AMENDMENT BILL, 1990

SHRI MAKHAN LAL FOTEDAR (Uttar Pradesh): Will you please yield for a moment? We have just now heard and it is a matter of anxiety not only for the Members of this House but for the entire nation that this Government had brought a Constitutional Amendment Bill regarding Punjab. It is heard—it is rumoured rather—that the Government could not muster sufficient strength and it has been, defeated in the Lower House. We would like to know whether it is a fact that the Bill has been rejected by the Lok Sabha due *to* the callousness of this Government. Such a thing is likely to create not noly a constitutional crisis but a national crisis. We ^ould share our concern with the Government.. But in case it is a fact, then this callousness of the Government is condemnable. I would like to know from the Government whether what we have heard or what is being rumoured in the corridors of this Parliament is a fact or not. Then the question can be discussed.

THE PRIME MINISTER (SHRI VISHWANATH PRATAP SINGH): Mr. Vice-Chairman. Sir, first of all, I must congratulate hon. Fotedarji far winning and d coming back to the House. He has not to depend on rumours. I have been there. Though there was a two-thirds majority, the quastioa